

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HOUSE BILL 2424

AN ACT

AMENDING TITLE 14, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-1101, 14-1104 AND 14-1105; AMENDING TITLE 14, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5109; AMENDING SECTIONS 14-5307, 14-5310, 14-5311, 14-5401, 14-5401.01, 14-5407 AND 14-5410, ARIZONA REVISED STATUTES; REPEALING SECTION 14-5415, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 14-5415; AMENDING SECTIONS 14-5418 AND 14-5652, ARIZONA REVISED STATUTES; RELATING TO THE PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 14, chapter 1, article 1, Arizona Revised Statutes,
3 is amended by adding sections 14-1101, 14-1104 and 14-1105, to read:

4 14-1101. Qualification of judge

5 A JUDICIAL OFFICER PRESIDING OVER PROCEEDINGS BROUGHT PURSUANT TO THIS
6 TITLE MUST PARTICIPATE IN TRAINING AS PRESCRIBED BY THE SUPREME COURT.

7 14-1104. Probate advisory panel; delayed repeal

8 A. THE PROBATE ADVISORY PANEL IS ESTABLISHED CONSISTING OF THE
9 FOLLOWING MEMBERS APPOINTED TO STAGGERED THREE YEAR TERMS:

10 1. TWO PUBLIC MEMBERS WHO ARE GUARDIANS OF AN ADULT CHILD OR A SIBLING
11 WHO IS A WARD OF THE COURT. THE PRESIDENT OF THE SENATE AND THE SPEAKER OF
12 THE HOUSE OF REPRESENTATIVES SHALL EACH APPOINT ONE MEMBER.

13 2. TWO PUBLIC MEMBERS WHO ARE CONSERVATORS OF A PARENT WHO HAS BEEN
14 DEEMED A PROTECTED PERSON. THE PRESIDENT OF THE SENATE AND THE SPEAKER OF
15 THE HOUSE OF REPRESENTATIVES SHALL EACH APPOINT ONE MEMBER.

16 3. ONE PUBLIC OR PRIVATE FIDUCIARY FROM A COUNTY WITH A POPULATION OF
17 LESS THAN FIVE HUNDRED THOUSAND PERSONS. THE SPEAKER OF THE HOUSE OF
18 REPRESENTATIVES SHALL APPOINT THIS MEMBER.

19 4. ONE ATTORNEY IN PRIVATE PRACTICE WHO SPECIALIZES IN PROBATE
20 MATTERS, WHO ACTS AS A COURT-APPOINTED ATTORNEY FOR WARDS AND PROTECTED
21 PERSONS AND WHO IS FROM A COUNTY WITH A POPULATION OF MORE THAN FIVE HUNDRED
22 THOUSAND PERSONS. THE PRESIDENT OF THE SENATE SHALL APPOINT THIS MEMBER.

23 5. ONE ATTORNEY IN PRIVATE PRACTICE WHO SPECIALIZES IN MENTAL HEALTH
24 MATTERS. THE GOVERNOR SHALL APPOINT THIS MEMBER.

25 6. ONE JUDGE WHO HAS EXPERTISE IN PROBATE MATTERS AND WHO IS FROM A
26 COUNTY WITH A POPULATION OF MORE THAN FIVE HUNDRED THOUSAND PERSONS. THE
27 GOVERNOR SHALL APPOINT THIS MEMBER.

28 B. THE PANEL SHALL:

29 1. SELECT A CHAIRPERSON AT ITS FIRST ANNUAL MEETING.

30 2. HOLD A PUBLIC HEARING AT LEAST ONCE EACH YEAR OR AT THE CALL OF THE
31 CHAIRPERSON, ON HOW TO IMPROVE THE PROBATE SYSTEM THROUGH STATUTORY CHANGES.

32 3. SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDATIONS TO THE
33 GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE PRESIDENT OF THE
34 SENATE AND THE CHIEF JUSTICE OF THE SUPREME COURT ON OR BEFORE NOVEMBER 15 OF
35 EACH YEAR. THE PANEL SHALL PROVIDE A COPY OF EACH REPORT TO THE SECRETARY OF
36 STATE.

37 C. PANEL MEMBERS ARE NOT ELIGIBLE FOR COMPENSATION OR REIMBURSEMENT OF
38 EXPENSES.

39 D. THE LEGISLATURE SHALL PROVIDE STAFF SUPPORT FOR THE PANEL.

40 E. THIS SECTION IS REPEALED FROM AND AFTER JUNE 30, 2016.

41 14-1105. Prudent management of costs

42 A. IN A PROCEEDING BROUGHT PURSUANT TO THIS TITLE:

43 1. THE FIDUCIARY MUST PRUDENTLY MANAGE COSTS AND PROTECT AGAINST
44 INCURRING ANY COSTS THAT EXCEED PROBABLE BENEFITS TO THE WARD PROTECTED
45 PERSON, INSTRUMENT OR COURT ORDER. A FIDUCIARY, FIDUCIARY'S ATTORNEY,

1 ATTORNEY FOR THE WARD OR PROTECTED PERSON AND GUARDIAN AD LITEM HAVE A DUTY
2 TO:

3 (a) ACT IN THE BEST INTEREST OF THE WARD, MINOR WARD, INCAPACITATED
4 PERSON OR PROTECTED PERSON AND THE PERSON'S ESTATE.

5 (b) AVOID ENGAGING IN EXCESSIVE OR UNPRODUCTIVE ACTIVITIES.

6 (c) PRESERVE THE ASSETS OF THE WARD, MINOR WARD, INCAPACITATED PERSON
7 OR PROTECTED PERSON AND THE PERSON'S ESTATE.

8 (d) AFFIRMATIVELY ASSESS THE FINANCIAL COST OF PURSUING ANY ACTION
9 COMPARED TO THE REASONABLY EXPECTED BENEFIT TO THE WARD, MINOR WARD,
10 INCAPACITATED PERSON OR PROTECTED PERSON AND THE PERSON'S ESTATE.

11 2. MARKET RATES FOR GOODS AND SERVICES ARE A PROPER, ONGOING
12 CONSIDERATION FOR THE FIDUCIARY AND THE COURT DURING THE INITIAL COURT
13 APPOINTMENT OF A FIDUCIARY OR ATTORNEY AND RELATING TO A REQUEST TO
14 SUBSTITUTE A COURT-APPOINTED FIDUCIARY OR ATTORNEY.

15 Sec. 2. Title 14, chapter 5, article 1, Arizona Revised Statutes, is
16 amended by adding section 14-5109, to read:

17 14-5109. General provisions; rights of ward

18 A. A PROPOSED WARD'S WRITTEN DIRECTIVES OR OTHER SIGNED WRITINGS SHALL
19 BE HONORED BY THE COURT UNLESS THE COURT MAKES A GOOD CAUSE DETERMINATION
20 PURSUANT TO SECTION 14-5311, SUBSECTION D OR OTHERWISE DETERMINES THE WARD
21 LACKED SUFFICIENT MENTAL CAPACITY TO MAKE AN INTELLIGENT CHOICE.

22 B. THE WARD'S FIDUCIARY SHALL ALLOW THE WARD TO SEE THE WARD'S FAMILY
23 MEMBERS AND FRIENDS UNLESS THE FIDUCIARY BELIEVES THAT DOING SO WILL RESULT
24 IN SUBSTANTIAL HARM TO THE WARD.

25 C. A WARD HAS THE RIGHT TO ACCESS ANY PERTINENT MEDICAL INFORMATION
26 RELATED TO THE WARD'S CONDITION UNLESS THE FIDUCIARY IS REASONABLY CERTAIN
27 SUBSTANTIAL HARM WILL RESULT FROM PROVIDING THIS INFORMATION.

28 D. IF THE PROPOSED WARD HAS AN ESTABLISHED RELATIONSHIP WITH A
29 PHYSICIAN, PSYCHOLOGIST OR REGISTERED NURSE WHO IS DETERMINED BY THE COURT TO
30 BE QUALIFIED TO EVALUATE THE PROPOSED WARD, THE COURT MAY APPOINT THE
31 PROPOSED WARD'S PHYSICIAN, PSYCHOLOGIST OR REGISTERED NURSE PURSUANT TO
32 SECTION 14-5303, SUBSECTION C OR SECTION 36-3206, SUBSECTION F.

33 E. A PERSON WHO KNOWINGLY PROVIDES THE COURT WITH FALSE OR MISLEADING
34 INFORMATION IN A PROCEEDING BROUGHT PURSUANT TO THIS CHAPTER IS SUBJECT TO
35 SANCTION BY THE COURT AND IS SUBJECT TO CIVIL LIABILITY AND DAMAGES TO BE
36 DETERMINED BY THE COURT.

37 F. A WARD MAY PETITION THE COURT FOR AN ORDER THAT THE WARD IS NO
38 LONGER INCAPACITATED OR PETITION FOR SUBSTITUTION OF THE GUARDIAN AT ANY TIME
39 PURSUANT TO SECTION 14-5307.

40 G. A PERSON WHO IS ENTITLED TO NOTICE OF THE CONSERVATOR'S ANNUAL
41 ACCOUNT PURSUANT TO SECTION 14-5419, SUBSECTION C MAY REQUEST IN WRITING THAT
42 THE CONSERVATOR:

1 1. ALLOW THE PERSON TO VIEW THE PROTECTED PERSON'S FINANCIAL RECORDS,
2 THE CONSERVATOR'S BILLING STATEMENTS, THE BILLING STATEMENTS OF THE
3 CONSERVATOR'S ATTORNEY OR OTHER RECORDS UNDER THE CONSERVATOR'S CONTROL
4 RELATED TO THE PROTECTED PERSON.

5 2. PROVIDE THE REQUESTING PERSON WITH COPIES OF THE PROTECTED PERSON'S
6 FINANCIAL RECORDS, THE CONSERVATOR'S BILLING STATEMENTS, THE BILLING
7 STATEMENTS OF THE CONSERVATOR'S ATTORNEY OR OTHER RECORDS RELATED TO THE
8 PROTECTED PERSON UNDER THE CONSERVATOR'S CONTROL. UNLESS OTHERWISE ORDERED
9 BY THE COURT, THE CONSERVATOR SHALL ALLOW THE PERSON TO VIEW OR PROVIDE
10 COPIES OF THE REQUESTED DOCUMENTS TO THE PERSON AS SOON AS PRACTICABLE BUT NO
11 LATER THAN THIRTY DAYS AFTER RECEIVING THE REQUEST. THE REQUESTING PARTY
12 MUST PAY REASONABLE COPYING COSTS.

13 Sec. 3. Section 14-5307, Arizona Revised Statutes, is amended to read:
14 14-5307. Removal or resignation of guardian; termination of
15 incapacity

16 A. On petition of the ward or any person interested in ~~his~~ THE WARD'S
17 welfare, OR ON THE COURT'S OWN INITIATIVE, the court ~~may remove~~, WITH OR
18 WITHOUT A HEARING, SHALL SUBSTITUTE a guardian and appoint a successor if it
19 is in the best ~~interests~~ INTEREST of the ward. THE COURT DOES NOT NEED TO
20 FIND THAT THE GUARDIAN ACTED INAPPROPRIATELY TO FIND THAT THE SUBSTITUTION IS
21 IN THE WARD'S BEST INTEREST. THE GUARDIAN AND THE GUARDIAN'S ATTORNEY MAY BE
22 COMPENSATED FROM THE WARD'S ESTATE FOR DEFENDING AGAINST A PETITION FOR
23 SUBSTITUTION ONLY FOR THE AMOUNT ORDERED BY THE COURT AND ON APPLICATION BY
24 THE GUARDIAN. WHEN SUBSTITUTING A GUARDIAN AND APPOINTING A SUCCESSOR, THE
25 COURT SHALL CONSIDER AN INDIVIDUAL NOMINATED BY THE WARD IF THE WARD IS AT
26 LEAST FOURTEEN YEARS OF AGE AND HAS, IN THE OPINION OF THE COURT, SUFFICIENT
27 MENTAL CAPACITY TO MAKE AN INTELLIGENT CHOICE. On petition of the guardian,
28 the court may accept a resignation and make any other order ~~which~~ THAT may be
29 appropriate.

30 B. ~~An order adjudicating incapacity may specify a minimum period, not~~
31 ~~exceeding one year, during which no petition for an adjudication that the~~
32 ~~ward is no longer incapacitated may be filed without special leave. Subject~~
33 ~~to this restriction, the ward or any person interested in his welfare may~~
34 ~~petition the court for an order that the ward is no longer incapacitated and~~
35 ~~for the removal or resignation of the guardian. A request for this order may~~
36 ~~be made by informal letter to the court or judge. Any person who knowingly~~
37 ~~interferes with the transmission of this request may be found in contempt of~~
38 ~~court.~~ ON ENTERING AN ORDER ADJUDICATING INCAPACITY AND AFTER CONSIDERING THE
39 REASONABLENESS OF THE POSITIONS TAKEN BY THE LITIGANTS, THE STRENGTH OF THE
40 EVIDENCE PRESENTED, INCLUDING THE PROBABILITY THAT THE WARD'S INCAPACITY MAY
41 BE REMOVED IN THE FUTURE, THE BENEFITS TO THE WARD, THE BEST INTEREST OF THE
42 WARD, THE EXPECTED COST TO THE WARD'S ESTATE AND OTHER RELEVANT FACTORS, THE
43 COURT MAY SPECIFY A MINIMUM PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH A
44 PETITION FOR AN ADJUDICATION THAT THE WARD IS NO LONGER INCAPACITATED OR
45 SUBSTITUTION OF A GUARDIAN MAY NOT BE FILED BY ANY PERSON OTHER THAN THE WARD

1 WITHOUT SPECIAL LEAVE OF THE COURT. THE WARD MAY PETITION THE COURT FOR AN
2 ORDER THAT THE WARD IS NO LONGER INCAPACITATED OR PETITION FOR SUBSTITUTION
3 OF THE GUARDIAN AT ANY TIME. A REQUEST FOR THIS ORDER MAY BE MADE BY
4 INFORMAL LETTER TO THE COURT OR JUDGE. A PERSON WHO KNOWINGLY INTERFERES
5 WITH THE TRANSMISSION OF THIS REQUEST MAY BE FOUND IN CONTEMPT OF COURT.

6 C. AN INTERESTED PERSON, OTHER THAN THE GUARDIAN OR WARD, SHALL NOT
7 FILE A PETITION FOR ADJUDICATION THAT THE WARD IS NO LONGER INCAPACITATED
8 EARLIER THAN ONE YEAR AFTER THE ORDER ADJUDICATING INCAPACITY WAS ENTERED
9 UNLESS THE COURT PERMITS IT TO BE MADE ON THE BASIS OF AFFIDAVITS THAT THERE
10 IS REASON TO BELIEVE THAT THE WARD IS NO LONGER INCAPACITATED.

11 D. AN INTERESTED PERSON, OTHER THAN THE GUARDIAN OR WARD, SHALL NOT
12 FILE A PETITION TO SUBSTITUTE A GUARDIAN EARLIER THAN ONE YEAR AFTER THE
13 ORDER ADJUDICATING INCAPACITY WAS ENTERED UNLESS THE COURT PERMITS IT TO BE
14 MADE ON THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO BELIEVE THAT THE
15 CURRENT GUARDIAN WILL ENDANGER THE WARD'S PHYSICAL, MENTAL OR EMOTIONAL
16 HEALTH IF NOT REMOVED.

17 E. TO MODIFY ANY TYPE OF GUARDIANSHIP ORDER, AN INTERESTED PERSON MUST
18 SUBMIT AN AFFIDAVIT OR VERIFIED PETITION SETTING FORTH DETAILED FACTS
19 SUPPORTING THE REQUESTED MODIFICATION AND SHALL GIVE NOTICE AND A COPY OF THE
20 AFFIDAVIT OR VERIFIED PETITION TO OTHER PARTIES TO THE PROCEEDING. OTHER
21 PARTIES MAY FILE OPPOSING AFFIDAVITS.

22 ~~G.~~ F. Before ~~removing~~ SUBSTITUTING a guardian, accepting the
23 resignation of a guardian or ordering that a ward's incapacity has
24 terminated, the court, following the same procedures to safeguard the rights
25 of the ward as apply to a petition for appointment of a guardian, may send an
26 investigator to the residence of the present guardian and to the place where
27 the ward resides or is detained to observe conditions and report in writing
28 to the court.

29 Sec. 4. Section 14-5310, Arizona Revised Statutes, is amended to read:
30 14-5310. Temporary guardians; appointment; notice; court
31 appointed attorney hearings; duties

32 A. If an alleged incapacitated person has no guardian and an emergency
33 exists or if an appointed guardian is not effectively performing the duties
34 of a guardian and the welfare of the ward is found to require immediate
35 action, the alleged incapacitated person, the ward or any person interested
36 in the welfare of the alleged incapacitated person or the ward may petition
37 for a finding of interim incapacity and for the appointment of a temporary
38 guardian. No finding and appointment may be made without notice, pursuant to
39 section 14-5309, except as provided in subsection B of this section.

40 B. The court may enter a finding of interim incapacity and may appoint
41 a temporary guardian without notice to the proposed ward or the proposed
42 ward's attorney only if all of the following conditions are met:

43 1. It clearly appears from specific facts shown by an affidavit or by
44 the verified petition that immediate and irreparable injury, loss or damage

1 will result before the proposed ward or the proposed ward's attorney can be
2 heard in opposition.

3 2. The petitioner or the petitioner's attorney certifies to the court
4 in writing any efforts that the petitioner or the petitioner's attorney has
5 made to give the notice or the reasons supporting the claim that notice
6 should not be required.

7 3. The petitioner files with the court a request for a hearing on the
8 petition for the appointment of a temporary guardian.

9 4. The petitioner or the petitioner's attorney certifies that that
10 person will give notice of the petition, the order and all filed reports and
11 affidavits to the proposed ward by personal service within the time period
12 the court directs but not in excess of seventy-two hours following entry of
13 the order of appointment.

14 5. The petitioner files a report from a physician, a registered nurse
15 practitioner or a psychologist detailing the need for a guardian and the
16 basis for the emergency unless the report is waived by the court on a showing
17 of good cause by a party to the action.

18 C. Unless the proposed ward is represented by independent counsel, the
19 court shall appoint an attorney to represent the proposed ward in the
20 proceeding on receipt of the petition for temporary appointment. The
21 attorney shall visit the proposed ward as soon as practicable and shall be
22 prepared to represent the interest of the proposed ward at any hearing on the
23 petition.

24 D. Every order finding interim incapacity and appointing a temporary
25 guardian granted without notice expires as prescribed by the court but within
26 a period of not more than thirty days unless within that time the court
27 extends it for good cause shown for the same period or unless the attorney
28 for the ward consents that it may be extended for a longer period. The court
29 shall enter the reasons for the extension on the record.

30 E. The court shall schedule a hearing on the petition for a finding of
31 interim incapacity and the appointment of a temporary guardian within the
32 time specified in subsection D of this section. If the petitioner does not
33 proceed with the petition the court, on the motion of any party or on its own
34 motion, may dismiss the petition.

35 F. If the court orders the appointment of a temporary guardian without
36 notice, the ward may appear and move for its dissolution or modification on
37 two days' notice to the petitioner and to the temporary guardian or on such
38 shorter notice as the court prescribes. The court shall proceed to hear and
39 determine that motion as expeditiously as possible. IF THE WARD OBJECTS TO
40 THE PERSON WHO IS TEMPORARILY APPOINTED, THE COURT SHALL CONSIDER AN
41 INDIVIDUAL NOMINATED BY THE PROPOSED WARD IF THE WARD IS AT LEAST FOURTEEN
42 YEARS OF AGE AND HAS, IN THE OPINION OF THE COURT, SUFFICIENT MENTAL CAPACITY
43 TO MAKE AN INTELLIGENT CHOICE. THE COURT SHALL APPOINT AN ALTERNATIVE
44 GUARDIAN IF AVAILABLE AND AFTER FINDING THAT THE APPOINTMENT IS IN THE BEST
45 INTERESTS OF THE WARD.

1 G. The hearing on a petition for the appointment of a temporary
2 guardian shall be held in the same manner as a hearing on a preliminary
3 injunction. The court may order the hearing on the petition for appointment
4 of a permanent guardian to be advanced and consolidated with the hearing of
5 the petition for temporary appointment. If the court does not order this
6 consolidation any evidence received on a petition for temporary appointment
7 that would be admissible at the hearing on a petition for a permanent
8 appointment becomes part of the record and need not be repeated at a later
9 hearing. This subsection does not limit the parties to any rights they may
10 have to trial by jury.

11 H. After notice and a hearing, if the court finds that a temporary
12 guardian is necessary and the provisions of this section have been met, the
13 court shall make an appointment of a temporary guardian for a specific
14 purpose and for a specific period of time of not more than six months unless
15 the court extends this time period for good cause shown.

16 I. A temporary guardian is responsible to provide the care and custody
17 of the ward. The authority of a permanent guardian previously appointed by
18 the court is suspended as long as the temporary guardian has authority. A
19 temporary guardian may be removed at any time. A temporary guardian shall
20 make any report the court requires. In all other respects, the provisions of
21 this title concerning guardians apply to temporary guardians.

22 Sec. 5. Section 14-5311, Arizona Revised Statutes, is amended to read:

23 14-5311. Who may be guardian; priorities

24 A. Any qualified person may be appointed guardian of an incapacitated
25 person, subject to the requirements of section 14-5106.

26 B. The court may consider the following persons for appointment as
27 guardian in the following order:

28 1. A guardian or conservator of the person or a fiduciary appointed or
29 recognized by the appropriate court of any jurisdiction in which the
30 incapacitated person resides.

31 2. An individual or corporation nominated by the incapacitated person
32 if the person has, in the opinion of the court, sufficient mental capacity to
33 make an intelligent choice.

34 3. The person nominated in the incapacitated person's most recent
35 durable power of attorney.

36 4. The spouse of the incapacitated person.

37 5. An adult child of the incapacitated person.

38 6. A parent of the incapacitated person, including a person nominated
39 by will or other writing signed by a deceased parent.

40 7. Any relative of the incapacitated person with whom the
41 incapacitated person has resided for more than six months before the filing
42 of the petition.

43 8. The nominee of a person who is caring for or paying benefits to the
44 incapacitated person.

1 9. If the incapacitated person is a veteran, the spouse of a veteran
2 or the minor child of a veteran, the department of veterans' services.

3 10. A fiduciary, ~~guardian or conservator~~ WHO IS LICENSED PURSUANT TO
4 SECTION 14-5651 OR OTHER APPROPRIATE PERSON.

5 11. A PUBLIC FIDUCIARY.

6 C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 OF THIS
7 SECTION, may nominate in writing a person to serve in that person's
8 place. With respect to persons who have equal priority, the court shall
9 select the one the court determines is best qualified to serve.

10 D. For good cause the court may pass over a person who has priority
11 and appoint a person who has a lower priority or no priority. FOR THE
12 PURPOSES OF THIS SUBSECTION, "GOOD CAUSE" INCLUDES, BUT IS NOT LIMITED TO,
13 THE ESTIMATED COST OF THE FIDUCIARY'S FEE, THE FIDUCIARY'S ATTORNEY FEE AND
14 THE ABILITY OF THE WARD TO PAY THESE FEES WITHOUT ADVERSELY AFFECTING THE
15 WARD'S FINANCIAL ABILITY TO PROVIDE FOR THE WARD'S REASONABLE AND NECESSARY
16 LIVING EXPENSES. ON REQUEST BY A PERSON WHO WAS PASSED OVER BY THE COURT
17 PURSUANT TO THIS SUBSECTION, THE COURT SHALL MAKE A SPECIFIC FINDING
18 REGARDING THE COURT'S DETERMINATION OF GOOD CAUSE AND WHY THE PERSON WAS NOT
19 APPOINTED.

20 Sec. 6. Section 14-5401, Arizona Revised Statutes, is amended to read:

21 14-5401. Protective proceedings

22 ~~Upon~~ ON petition and after notice and a hearing in accordance with the
23 provisions of this article, the court may appoint a conservator or make
24 another protective order for cause as follows:

25 1. Appointment of a conservator or other protective order may be made
26 in relation to the estate and affairs of a minor if the court determines that
27 a minor owns money or property that requires management or protection ~~which~~
28 THAT cannot otherwise be provided or has or may have affairs ~~which~~ THAT may
29 be jeopardized or prevented by ~~his~~ minority or that funds are needed for ~~his~~
30 THE MINOR'S support and education and that protection is necessary or
31 desirable to obtain or provide funds.

32 2. Appointment of a conservator or other protective order may be made
33 in relation to the estate and affairs of a person if the court
34 determines both of the following BY CLEAR AND CONVINCING EVIDENCE:

35 (a) The person is unable to manage the person's estate and affairs
36 effectively for reasons such as mental illness, mental deficiency, mental
37 disorder, physical illness or disability, chronic use of drugs, chronic
38 intoxication, confinement, detention by a foreign power or disappearance.

39 (b) The person has property which will be wasted or dissipated unless
40 proper management is provided, or that funds are needed for the support, care
41 and welfare of the person or those entitled to be supported by the person and
42 that protection is necessary or desirable to obtain or provide funds.

1 Sec. 7. Section 14-5401.01, Arizona Revised Statutes, is amended to
2 read:

3 14-5401.01. Temporary conservators; appointment; notice;
4 hearings

5 A. If a person in need of protection has no conservator and an
6 emergency exists or if an appointed conservator is not effectively performing
7 the duties of a conservator and the estate or affairs of the protected person
8 are found to require immediate action, the person in need of protection, the
9 protected person or any person interested in that person's estate or affairs
10 may petition for a finding of a need for interim protection and for the
11 appointment of a temporary conservator. No finding and appointment may be
12 made without notice, pursuant to section 14-5405, except as provided in
13 subsection B of this section.

14 B. The court may enter a finding of a need for interim protection and
15 may appoint a temporary conservator without notice to the proposed protected
16 person or the proposed protected person's attorney if all of the following
17 conditions are met:

18 1. It clearly appears from specific facts shown by affidavit or by the
19 verified petition that immediate and irreparable injury, loss or damage will
20 result before the proposed protected person or that person's attorney can be
21 heard in opposition.

22 2. The petitioner or the petitioner's attorney certifies to the court
23 in writing any efforts that the petitioner or the attorney has made to give
24 the notice or the reasons supporting the claim that notice should not be
25 required.

26 3. The petitioner files with the court a request for a hearing on the
27 petition for the appointment of a temporary conservator.

28 4. The petitioner or the petitioner's attorney certifies that notice
29 of the petition, order and all filed reports and affidavits will be given to
30 the proposed protected person by personal service within the time period the
31 court directs but not more than seventy-two hours after entry of the order of
32 appointment.

33 C. Unless the proposed protected person is represented by independent
34 counsel, the court shall appoint an attorney to represent that person in the
35 proceeding on receipt of the petition for temporary appointment. The
36 attorney shall visit the proposed protected person as soon as practicable and
37 shall be prepared to represent that person's interests at any hearing on the
38 petition.

39 D. Every order finding a need for interim protection and appointing a
40 temporary conservator granted without notice expires as prescribed by the
41 court but within a period of not more than thirty days unless within that
42 time the court extends it for good cause shown for the same period or unless
43 the attorney for the proposed protected person consents that it may be
44 extended for a longer period. The court shall enter the reasons for the
45 extension on the record.

1 E. The court shall schedule a hearing on the petition for a finding of
2 the need for interim protection and the appointment of a temporary
3 conservator within the time specified in subsection D of this section. If
4 the petitioner does not proceed with the petition the court, on the motion of
5 any party or on its own motion, may dismiss the petition.

6 F. If the court orders the appointment of a temporary conservator
7 without notice, the proposed protected person may appear and move for its
8 dissolution or modification on two days' notice to the petitioner and to the
9 temporary conservator, or on such shorter notice as the court prescribes.
10 The court shall proceed to hear and determine that motion as expeditiously as
11 possible. IF THE PROPOSED PROTECTED PERSON OBJECTS TO THE PERSON WHO IS
12 TEMPORARILY APPOINTED, THE COURT SHALL CONSIDER AN INDIVIDUAL NOMINATED BY
13 THE PROPOSED PROTECTED PERSON IF THE PROPOSED PROTECTED PERSON IS AT LEAST
14 FOURTEEN YEARS OF AGE AND HAS, IN THE OPINION OF THE COURT, SUFFICIENT MENTAL
15 CAPACITY TO MAKE AN INTELLIGENT CHOICE. THE COURT SHALL APPOINT AN
16 ALTERNATIVE CONSERVATOR IF AVAILABLE AND AFTER FINDING THAT THE APPOINTMENT
17 IS IN THE BEST INTERESTS OF THE WARD.

18 G. The hearing on a petition for the appointment of a temporary
19 conservator shall be held in the same manner as a hearing on a preliminary
20 injunction. The court may order the hearing on the petition for appointment
21 of a permanent conservator to be advanced and consolidated with the hearing
22 of ON the petition for temporary appointment. If the court does not order
23 this consolidation any evidence received on a petition for temporary
24 appointment that would be admissible at the hearing on a petition for a
25 permanent appointment becomes part of the record and need not be repeated at
26 a later hearing. This subsection does not limit the parties to any rights
27 they may have to trial by jury.

28 H. After notice and a hearing, if the court finds that a temporary
29 conservator is necessary and the provisions of this section have been met,
30 the court shall make an appointment of a temporary conservator for a
31 specified period of time of not more than six months unless the court extends
32 this time period for good cause shown.

33 Sec. 8. Section 14-5407, Arizona Revised Statutes, is amended to read:
34 14-5407. Procedure concerning hearing and order on original
35 petition

36 A. On the filing of a petition for appointment of a conservator or any
37 other protective order because of minority, the court shall set a hearing
38 date on the matters alleged in the petition. If, at any time in the
39 proceeding, the court determines that the interests of the minor are or may
40 be inadequately represented, it shall appoint an attorney to represent the
41 minor. If the minor is at least fourteen years of age the court shall
42 consider the choice of the minor.

43 B. On the filing of a petition for appointment of a conservator or any
44 other protective order for reasons other than minority, the court shall set a
45 hearing date. Unless the person to be protected has counsel of his THAT

1 PERSON'S own choice, the court shall appoint an attorney to represent him
2 THAT PERSON. If the alleged disability is mental illness, mental deficiency,
3 mental disorder, physical illness or disability, chronic use of drugs, or
4 chronic intoxication, the court shall appoint an investigator to interview
5 the person to be protected. On petition by an interested person or on the
6 court's own motion, the court may direct that an appropriate medical or
7 psychological evaluation of the person be conducted. The investigator and
8 the person conducting the medical or psychological evaluation shall submit
9 written reports to the court before the hearing date.

10 C. In any case where the veterans administration is or may be an
11 interested party, a certificate of an authorized official of the veterans
12 administration that the person allegedly in need of protection has been found
13 incapable of handling the benefits payable, on examination in accordance with
14 the laws and regulations governing the veterans administration, is prima
15 facie evidence of the necessity for appointment of a conservator.

16 D. The person allegedly in need of protection is entitled to be
17 present at the hearing, to be represented by counsel, to present evidence and
18 to cross-examine witnesses, including any court appointed examiner and
19 investigator. The issue may be determined at a closed hearing if the person
20 allegedly in need of protection or that person's counsel so requests.

21 E. After the hearing, ~~upon~~ ON a finding BY CLEAR AND CONVINCING
22 EVIDENCE, that a basis for the appointment of a conservator or any other
23 protective order has been established, the court shall make an appointment or
24 other appropriate protective order.

25 Sec. 9. Section 14-5410, Arizona Revised Statutes, is amended to read:
26 14-5410. Who may be appointed conservator; priorities

27 A. The court may appoint an individual or a corporation, with general
28 power to serve as trustee, as conservator of the estate of a protected person
29 subject to the requirements of section 14-5106. The following are entitled
30 to consideration for appointment in the order listed:

31 1. A conservator, guardian of property or other like fiduciary
32 appointed or recognized by the appropriate court of any other jurisdiction in
33 which the protected person resides.

34 2. An individual or corporation nominated by the protected person if
35 the protected person is at least fourteen years of age and has, in the
36 opinion of the court, sufficient mental capacity to make an intelligent
37 choice.

38 3. The person nominated in the protected person's most recent durable
39 power of attorney.

40 4. The spouse of the protected person.

41 5. An adult child of the protected person.

42 6. A parent of the protected person, or a person nominated by the will
43 of a deceased parent.

44 7. Any relative of the protected person with whom the protected person
45 has resided for more than six months before the filing of the petition.

1 8. The nominee of a person who is caring for or paying benefits to the
2 protected person.

3 9. If the protected person is a veteran, the spouse of a veteran or
4 the minor child of a veteran, the department of veterans' services.

5 10. A fiduciary, ~~guardian or conservator~~ WHO IS LICENSED PURSUANT TO
6 SECTION 14-5651 OR OTHER APPROPRIATE PERSON.

7 11. A PUBLIC FIDUCIARY.

8 B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this
9 section may nominate in writing a person to serve in that person's place.
10 With respect to persons having equal priority, the court shall select the one
11 it determines is best qualified to serve. The court, for good cause, may
12 pass over a person having priority and appoint a person having a lower
13 priority or no priority. FOR THE PURPOSES OF THIS SUBSECTION, GOOD CAUSE
14 INCLUDES THE ESTIMATED COST OF THE FIDUCIARY AND OTHER PROFESSIONAL FEES AND
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21 Sec. 10.

22 Section , Arizona Revised Statutes, is repealed.

23 Sec. 11. Title 14, chapter 5, article 4, Arizona Revised Statutes, is
24 amended by adding a new section 14-5415, to read:
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